

NO PROTEST RECEIVED

CASE CLOSED

Internal Revenue Service

District Director

Date: MAY 18 1998

Department of the Treasury

P.O. Box 2504
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:
EP/EO

Employer Identification Number:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(6) or 501(c)(7) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

~~_____~~
If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

C. Ashley Bullard
C. Ashley Bullard
District Director

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Enclosure I
Form 6018
Publication 892

CC: ~~_____~~
~~_____~~
~~_____~~

Enclosure I

[REDACTED]
[REDACTED]
A review of your file showed that you were incorporated on [REDACTED]. Your Articles of Incorporation stated your purposes were, in part:

The specific and primary purpose is to administer, maintain and operate on behalf of the County of [REDACTED] that certain building owned by the [REDACTED] commonly referred to as [REDACTED], in order to provide club rooms, a canteen and incidental rental and recreational use therein.

On November 21, 1997, you applied for exemption under section 501(c)(6) or 501(c)(7) of the Code. You stated that you were formed by representatives of various veterans organizations such as [REDACTED], [REDACTED], [REDACTED], [REDACTED], and the [REDACTED]. You stated that each veterans organization appointed two of their members to be your board of directors. However, your application listed only three board members.

You considered yourself an agency of the county because you made annual reports to the county and occasionally asked for financial assistance. Until 1995, the county decided to re-write the contract and to make you an independent contractor. You have entered into a contract with the county to maintain its building and to rent the building to the general public. The building consists of a large hall with stage, a smaller hall, bars, snack bar, club room, [REDACTED] living quarters, your office, [REDACTED], the [REDACTED] office, and rest rooms.

The building is used for rental (office spaces, weddings, queanceas, weekend dances, anniversaries, canteen, snack bar, and sport bar), and bingo operation. You own a [REDACTED] liquor license, sport bar, canteen and a dance bar. The snack bar, club room, and sport bar are open daily and leased to your manager who will pay you a percentage of his profit as well as the basic rent. Your manager pays a monthly flat rate of \$[REDACTED] for the snack bar. In addition, he pays your telephone bills and provides janitorial services twice a week for the downstairs rest rooms. He pays \$[REDACTED] rent plus [REDACTED] percent of net profit for the canteen or club room. And he pays [REDACTED] a month plus 50 percent of net profit for the sport bar. You operate a separate bar and open only upon request of the lessees for [REDACTED] ([REDACTED]), special dances, weddings, etc. A bartender is provided for these events if this bar is open.

You stated that if any veterans organizations such as [REDACTED], [REDACTED] or [REDACTED], wanted to use the hall for non-money making purposes, there would be no fee. [REDACTED] uses your facility one or twice a week. [REDACTED]

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[REDACTED]
[REDACTED]
has on several occasions used it. The [REDACTED] also uses your facility for meetings and on election day. [REDACTED] organization uses it twice a month for their meetings, and [REDACTED] uses the hall for [REDACTED] meetings. All these were used with no charge. For 1997, there were [REDACTED], 15 wedding receptions, and 6 school or youth related functions. Of the 29 events, you provided bar services for [REDACTED] and 14 wedding receptions. For the school or youth related events, you provide the space at a lower rental rate or at no charge.

Regarding your bingo operation, you have 21 volunteers on the list, and about 13 to 15 needed at each session which is held every Sunday. You stated that the secretary and the manager also work at bingo sessions on Sundays but they were not paid for volunteering bingo games. You stated that your bingo operation helps paying maintenance costs and operating expenses of the facility. However, the financial data showed the bingo payouts, supplies, prizes, and advertising costs exceeded the total bingo income from 1994 through 1997. And your 1998 and 1999 budgets for bingo and pull-tabs also showed anticipated loss.

Your sources of income are from bingo, pull-tabs, and rents. Your expenses include insurance, repairs, utilities, telephone, supplies, payroll taxes, security, and licenses or permits. Your paid staff includes the secretary, manager, assistant manager, bartender, clean-up workers, and maintenance crew. The secretary, [REDACTED], is paid \$[REDACTED] per year for his accounting work. Your manager, [REDACTED], is paid \$16,900 plus his living quarters. His duties are renting and maintaining the building, and controlling the workers. The balance of his time is operating his own enterprise, snack bar, club room, and sport bar. He spends approximate [REDACTED] percent of his time on bingo, [REDACTED] percent on managing the building, and [REDACTED] percent on his own enterprise. Your assistant manager, [REDACTED], is paid \$[REDACTED], and his responsibility is to maintain the building, give orders to workers, and help the manager when he is not available. The bartender is paid \$[REDACTED] for operating the bar upon request of the lessees. You also gave \$[REDACTED], \$[REDACTED], and \$[REDACTED] to other nonprofit organizations, and veteran's groups in 1992, 1996, and 1997, respectively.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes. Section 501(c)(4) of the Code provides, in part, for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

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[REDACTED]

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

Section 501(c)(6) provides for the exemption of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.506(c)(6)-1 of the Income Tax Regulations states, in part: "A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest.... It is an organization of the same general class a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons."

Section 501(c)(7) of the Code provides for the exemption from Federal income tax of clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Section 1.501(c)(7)-1(a) of the Regulations states that the exemption provided by section 501(a) of the Code for an organization described in section 501(c)(7) of the Code applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inure to the benefit of any private shareholder. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

Section 1.501(c)(7)-1(b) of the Regulations states that a club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate, timber, or other products, is not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, and is not exempt under section 501(a) of the Code. Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption. As

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previously noted, section 501(c)(7) of the Code requires that substantially all of a social club's activities be social or recreational activities for members. However, Public Law 94-568, 1976-2 C.B. 596, provides that a social club may receive up to 35 percent of its gross receipts, including investment income from sources outside its membership without losing exemption. Within this 35 percent amount, not more than 15 percent of the gross receipts should be derived from the use of a social club's facilities or services by the general public. This means that an exempt social club may receive up to 35 percent of its gross receipts from a combination of investment income and receipts from nonmembers so long as the latter do not represent more than 15 percent of the total receipts.

In Ohio County & Independent Agriculture Societies, Delaware County Fair v. Commissioner, T.C.M. 1982-210, an agricultural society exempt under section 501(c)(5) conducted an annual fair and also rented its fair grounds to a horse sales company. Under a lease agreement, the exempt organization was paid 10 percent of the first \$10,000 of the lessee organization's yearly net profits from sales conducted on the premises, 20 percent of the next \$10,000, and 25 percent of all net profits in excess of \$20,000. The court held that the rents are based on a percentage of the lessee's net profits and, therefore, in accordance with section 512(b)(3)(B)(ii) of the Internal Revenue Code, are not excluded in computing the tax on unrelated business income.

Revenue Ruling 67-109, 1967-1 C.B. 136, stated that a nonprofit corporation organized and operated exclusively for the purpose of establishing and maintaining a roller skating rink as a recreational facility for the benefit and use of the residents of a particular county, in a county-owned building which it occupied rent free in cooperation with the county government, might qualify for exemption from Federal income tax under section 501(c)(4) where the rink is open to the general public upon payment of such nominal dues and admissions charges as needed to defray operating expenses.

Revenue Ruling 68-45, 1968-1 C.B. 259, stated a war veterans' post which is primarily engaged in social welfare activities might qualify for exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code notwithstanding the fact that it receives a substantial portion of its funds from bingo games open to the general public.

Revenue Ruling 68-46, 1968-1 C.B. 260, stated a war veterans' organization did not qualify for exemption from Federal income tax under section 501(c)(4) where it was primarily engaged in renting a commercial building and operating a public banquet and meeting hall having bar and dining facilities.

Revenue Ruling 69-69, 1969-1 C.B. 159, stated that because of the services provided, the leasing of studio apartments within dining and

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other personal services is not excluded from unrelated trade or business income under section 512(b)(3) of the Code.

Revenue Ruling 69-178, 1969-1 C.B. 158, stated that income derived by an exempt organization from the rental of its meeting hall, where only utilities and janitorial services are provided, did not constitute rent from real property within the meaning of section 512(b)(3) of the Code.

[redacted] stated that no person or agent was allowed to receive a profit, wage, salary, or other income from any bingo game, except as a bona fide prize received as a participant in such bingo game.

You do not bear the character of a business league, chamber of commerce, board of trade, etc., which is described in section 501(c)(6) of the Code. Your activities include renting and maintaining the [redacted] and operating bingo sessions. These are not activities described in section 501(c)(6) of the Code.

You do not meet the requirements in section 501(c)(7) of the Code because 100 percent of your income derived from nonmembers, and your primary purpose is not to provide social events to members.

We also looked into whether you would qualify for section 501(c)(4) of the Code as a social welfare organization. In order to qualify for this section, your primary activities must be for the promotion of social welfare of the community.

The rental fees from the [redacted] are similar to the situation described in the court case, Ohio County & Independent Agricultural Societies, Delaware County Fair v. Commissioner of Internal Revenue Service, which charges the lessee based on his profit and which income is considered unrelated business income. Most of your rental fees derived from the general public are also considered unrelated business income because you provide bar services for the lessees as described in Revenue Rulings 68-46 and 69-69. You are also different from the organization described in Revenue Ruling 69-178 because the rental of the hall includes bar services, not just utilities and janitorial services. Your activities are different from those of the organization described in Revenue Ruling 68-45 because you do not have any other programs that promote the social welfare of the community, and most of your rental functions are considered unrelated business activities. You do not resemble the character of the community center as described in Revenue Ruling 67-109 because the lease arrangements you have with [redacted] and [redacted] as described above.

Also, the conduct of bingo games and pull-tabs on a regular basis is not, in itself, an exempt activity as the term is defined by the Income Tax Regulations. The state or local bingo law does not allow paid staff to conduct bingo games. Although some of your paid employees work at bingo

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sessions, you stated that they received payments for working other duties rather than bingo games. In order to establish that you are not operated for the primary purpose of carrying on a trade or business, you must demonstrate that you are carrying on exempt activities through the use of bingo proceeds. Your bingo proceeds, if any, are used for the maintenance of the facility which is mainly used for unrelated business activities; therefore, your bingo activity is also not in furtherance of exempt purposes.

Accordingly, we have concluded that you are not exempt from Federal income tax.

Form 6018
(Rev. August 1983)

Department of the Treasury Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare in
Duplicate

se Number [REDACTED]	Date of Latest Determination Letter
holder Identification Number [REDACTED]	Date of Proposed Adverse Action Letter MAY 18 1995
ame and Address of Organization [REDACTED] [REDACTED] [REDACTED]	

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)() to 501(c)(), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization
[REDACTED]

Signature and Title

Date

Signature and Title

Date